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No. 84894-7

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 62843-7-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

SCOTT E. STAFNE,

Appellant,

vs.

SNOHOMISH COUNTY AND
SNOHOMISH COUNTY PLANNING DEPARTMENT,

Respondents.

ANSWER TO *AMICUS CURIAE* WASHINGTON ASSOCIATION OF
PROSECUTING ATTORNEYS' MEMORANDUM IN SUPPORT OF
SNOHOMISH COUNTY'S PETITION FOR REVIEW

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. STATEMENT OF THE CASE	1
III. INTEREST OF <i>AMICUS CURIAE</i>	1
IV. ARGUMENT	1
A. The Court of Appeals' Decision is Contrary to Supreme Court Precedent.....	2
B. The Court of Appeals' Decision is in Conflict with Another Decision of the Court of Appeals.....	3
C. The Issues Involved With Snohomish County's Petition are of Substantial Public Interest.....	3
V. CONCLUSION	4

TABLE OF AUTHORITIES

State Cases

Page

<u>Torrance v. King County</u> 136 Wn.2d 783, 966 P.2d 891 (1998).....	1, 2, 3
<u>Coffee v. City of Walla Walla</u> 145 Wn. App. 435, 187 P.3d 272 (2008).....	2, 3

Statutes

RCW 34.05	2
RCW 36.70A.....	3
RCW 36.70C.....	3
RCW 36.70C.020(2)(a).....	3

Rules

RAP 13.4(b)(1)	1, 4
RAP 13.4(b)(2)	2, 4
RAP 13.4(b)(4)	2, 4

I. INTRODUCTION

Snohomish County (the “County”) files this Answer in support of *amicus curiae* the Washington Association of Prosecuting Attorneys’ (“WAPA”) memorandum in support of the County’s Petition for Review.

II. STATEMENT OF THE CASE

The County refers the Court to the statement of the case provided in the County’s Petition for Review (pages 2-4), as well as the statement of the case set forth in the County’s Response Brief to the Court of Appeals (pages 2-11).

III. INTEREST OF *AMICUS CURIAE*

The County agrees with WAPA that WAPA and its members have a vital interest in this case, which will determine how challenges to comprehensive plan amendments will be litigated, and in what forum.¹

IV. ARGUMENT

The County agrees with the arguments presented in WAPA’s memorandum. In particular, the County agrees that the Court of Appeals’ decision in this case (i) meets the criterion for review set forth in RAP 13.4(b)(1), as it directly conflicts with a decision of this Court, namely, the decision of Torrance v. King County, 136 Wn.2d 783, 966

¹ *Amicus Curiae* Washington Association of Prosecuting Attorneys’ Memorandum in Support of Snohomish County’s Petition for Review, p. 1.

P.2d 891 (1998);² (ii) meets the criterion for review set forth at RAP 13.4(b)(2), as it directly conflicts with a decision from another Division of the Court of Appeals, namely, the Division III decision of Coffee v. City of Walla Walla, 145 Wn. App. 435, 187 P.3d 272 (2008);³ and (iii) meets the criterion for review set forth at RAP 13.4(b)(4), as it involves issues of substantial public interest that should be determined by this Court.⁴

A. The Court of Appeals' Decision is Contrary to Supreme Court Precedent.

The County agrees with WAPA that this Court's holding in Torrance v. King County, 136 Wn.2d 783, 966 P.2d 891 (1998), governs the proper disposition of this case.⁵ In Torrance, this Court held that, as a procedural matter, an appeal of a rejected GMA docket application must go first to the Growth Management Hearings Board (the "Growth Board"), and then to Superior Court under the Administrative Procedure Act, chapter 34.05 RCW ("APA").⁶ The County agrees with WAPA that the

² *Amicus Curiae* Washington Association of Prosecuting Attorneys' Memorandum in Support of Snohomish County's Petition for Review, p. 2.

³ *Amicus Curiae* Washington Association of Prosecuting Attorneys' Memorandum in Support of Snohomish County's Petition for Review, pp. 5-6.

⁴ *Amicus Curiae* Washington Association of Prosecuting Attorneys' Memorandum in Support of Snohomish County's Petition for Review, p. 7.

⁵ *Amicus Curiae* Washington Association of Prosecuting Attorneys' Memorandum in Support of Snohomish County's Petition for Review, p. 4.

⁶ County's Petition for Review, pp. 10-15.

facts of this case are substantially similar to the facts of Torrance. Thus, the procedural rule announced by Torrance should apply here.

B. The Court of Appeals' Decision is in Conflict with Another Decision of the Court of Appeals.

The County agrees with WAPA that the Court of Appeals erred in holding that the docket proposal at issue in this case was a "land use decision" reviewable under the Land Use Petition Act, chapter 36.70C RCW ("LUPA").⁷ Instead, the County agrees with WAPA that, as established by the Division III decision of Coffee v. City of Walla Walla, 145 Wn. App. 435, 187 P.3d 272 (2008), Appellant/Petitioner Scott E. Stafne's docket proposal was an "application for legislative approval" that is exempted from LUPA's scope by RCW 36.70C.020(2)(a).⁸

C. The Issues Involved With Snohomish County's Petition are of Substantial Public Interest.

The County agrees with WAPA that the implications of the Court of Appeals' decision in this case are significant and of substantial public interest.⁹ As WAPA points out, many jurisdictions other than Snohomish County conduct comprehensive planning under the Growth Management Act, chapter 36.70A RCW ("GMA"). Each of these jurisdictions receives

⁷ *Amicus Curiae* Washington Association of Prosecuting Attorneys' Memorandum in Support of Snohomish County's Petition for Review, pp. 5-6.

⁸ County's Petition for Review, pp. 5-8.

⁹ *Amicus Curiae* Washington Association of Prosecuting Attorneys' Memorandum in Support of Snohomish County's Petition for Review, pp. 7-8.

numerous docket applications each year under the docketing process mandated by the GMA. All of those docket applications have the potential to be appealed. It is crucial for all parties involved in such appeals to share the same understanding regarding how, when and where such appeals should be pursued. The Court of Appeals decision in this case muddies this issue.

V. CONCLUSION

The County joins with WAPA in respectfully requesting this Court to grant the County's Petition for Review under RAP 13.4(b)(1), RAP 13.4(b)(2) and RAP 13.4(b)(4).

Respectfully submitted this 1st day of November, 2010.

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Subject: Filings for Stafne v. Snohomish County - Supreme Court No. 84894-7

Attached for filing are the following documents:

- Answer to *Amicus Curiae* Washington Association of Prosecuting Attorneys' Memorandum in Support of Snohomish County's Petition;
- Answer to Brief of *Amicus Curiae* Washington State Association of Municipal Attorneys in Support of Snohomish County's Petition;
- Certificate of Service for WAPA Answer;
- Certificate of Service for WSAMA Answer.

Stafne v. Snohomish County and Snohomish County Planning Department
Supreme Court Case No. 84894-7.

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